

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:05-cr-234-RLV-CH-2

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN SPEAGLE, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court on Defendant’s “Motion to Recall Mandate under Rule 40/41 and Reconsider Motion Relating to Simmons Claim,” (Doc. No. 197). Petitioner is serving a 292-month sentence after pleading guilty in this Court to conspiracy to possess with intent to distribute methamphetamine and crystal methamphetamine. After his conviction and sentence were upheld on appeal, Petitioner filed a Section 2255 motion to vacate, which this Court denied on the merits on April 2, 2010. On August 17, 2012, Petitioner filed a second 2255 petition, raising a claim under United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). This Court denied Petitioner’s second motion to vacate as a successive petition. In response, Petitioner filed the instant motion, in which he cites Miller v. United States, 735 F.3d 141 (4th Cir. 2013), and he argues that, in light of Simmons and Miller, he should not have been subject to a sentence enhancement because he was sentenced to five to six months on the prior felony conviction.

Before ruling on the motion, the Court will require the Government to submit a response to the motion.

**IT IS THEREFORE ORDERED** that the Government shall have 20 days to respond to Petitioner's "Motion to Recall Mandate under Rule 40/41 and Reconsider Motion Relating to Simmons Claim." The Court will not entertain motions for extension of time from the Government in this matter, as Petitioner has a pending petition for writ of mandamus as to this motion before the Fourth Circuit Court of Appeals.

Signed: July 16, 2015

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees  
United States District Judge

